

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7571 OF 2005

Dnyanba Yesba Raul,
since deceased by his L.Rs. Petitioners

V/s.

Gangaram B. Raul,
since deceased by his L.Rs. Respondents

Mr.S.G. Deshmukh for the Petitioners.

Mr.V.S. Sadavarte for Respondent Nos.1 and 2.

CORAM : R.M. SAVANT, J.
DATED : 5TH JUNE, 2007.

P.C. :

1. Rule. Rule with the consent of the parties made returnable forthwith and heard.

2. This Petition filed under Article 227 of the Constitution of India impugns the order dated 25.10.2001 passed by the Additional Commissioner, Pune in Revision Application Kop.No.233 of 2001.

3. Such of the facts which are necessary to be cited are stated thus :-

. R.C.S.No. 10 of 1991 filed by one Dnyanba Yesaba Raul, since deceased, and now represented by his L.Rs., who are the Petitioners abovenamed came to be partly decreed on 29.3.1993. Pursuant to the said decree, ancestral properties and Devasthan lands which are in possession of the family came to be partitioned by the Tahsildar vide his order dated 25.4.1997. It appears that the contesting Respondent Nos.1 and 2 did not appear before the Tahsildar. Aggrieved by the said partition carried out by the Tahsildar, Respondent Nos.1 and 2 filed Appeal No.1 of 1997. The principal grievance of Respondent Nos.1 and 2 is that though house No.168 situated in Gat No.98 was to come to the share of the said Respondents in the partition, it was given in the share of the Petitioners and further grievance was that all Devasthan lands were given to the share of the said Appellants. The said Appeal came to be allowed by the learned S.D.O. vide its order dated 29.10.1998 and the S.D.O. totally reversed the position in so far as the allocation of the lands in the partition is concerned. The said Gat No.98 as well as other Devasthan lands which were earlier allotted to Respondent Nos.1 and 2 came to be allotted to the Petitioners.

4. Aggrieved by the said order passed in the

said Appeal No.1 of 1997 dated 29.10.1998, the Petitioners filed Second Appeal No.229 of 1998 which came to be dismissed by the Additional Collector vide his order dated 19.6.2000. Against the order passed by the Additional Collector, the Petitioners herein filed Revision Appeal No.KOP 233 of 2001 which also came to be dismissed by the Additional Commissioner on the ground that the partition of the Property is as per the decree passed by the Civil Court.

5. I have heard the learned counsel for the Petitioner as well as the learned counsel for the contesting Respondent Nos.1 and 2. Mr.Deshmukh, the learned counsel for the Petitioners drew my attention to various orders passed by the authorities and the averments made by Respondent Nos.1 and 2 herein in Appeal No.1 of 1997. It is submitted by the learned counsel for the Petitioner Mr.Deshmukh that the distribution of the lands i.e. ancestral and Devasthan ought to have been equitable though earlier the ancestral lands had come wholly to the share of the Petitioners. The higher authorities have erred by reversing the said allocation by allotting the ancestral lands to the contesting Respondent Nos.1 and 2 and Devasthan lands to the Petitioners.

6. The learned counsel for the Petitioner further submitted that the matter requires to be remanded back to the Tahsildar, for a decision afresh as regards the partition of the properties was concerned.

7. On the other hand, Mr.Sadavarte, the learned counsel for the contesting Respondent Nos.1 and 2 contends that the partition carried out by the Tahsildar is as per the decree of the Civil Court dated 29.3.1993. Mr.Sadavarte relied upon the decree to contend that the directions are clear. Mr.Sadavarte contends that the house property No.158 in the said Gat No.98, which has to come to the share of Respondent Nos.1 and 2 and the agricultural lands have been partitioned as per the respective shares.

8. I have given my anxious consideration to the rival contentions, a reading of the orders passed by the authorities below ex-facie makes it clear that though the house property No.158 in Gat No.98 comes to the share of Respondent Nos.1 and 2 herein, all other properties were required to be divided equally in accordance with the decree dated 29.3.1993, the order passed by the Tahsildar has totally been reversed by the higher authorities in the matter of allocation of

the ancestral and Devasthan properties, this, in my view, is not permissible as the distribution has to be equitable in respect of the ancestral and Devasthan lands. Another aspect to be noted is that the partition has to be on the basis that the same is in consonance with the provisions of the Prevention of Fragmentation and Consolidation of Holdings Act, 1947. Mr.Deshmukh, fairly concedes that in so far as the house property No.158 in Gat No.98 is concerned, the same ought to come to the share of the contesting Respondent Nos.1 and 2 herein. It is pertinent to that Respondent Nos.1 and 2 principally filed an Appeal that the said Gat No.98 in which the house property is situated, has gone to the share of the Petitioners in the partition carried out by the Tahsildar. Therefore in so far as the house property No.158 in Gat No.98 is concerned the same stands concluded.

9. In that view of the matter, the interest of justice would be served, if the matter as regards partition to be carried out pursuant to the decree dated 29.3.1993 passed in R.C.S. No.10 of 1991 is remanded back to the Tahsildar for a decision afresh. Consequently, all the orders passed by all the authorities below would have to be set-aside and the

course as directed hereinabove would have to be carried out de-novo.

10. On such remand, the Tahsildar to take steps to partition the properties excluding house property No.158 in Gat No.98 in terms of the decree dated 29.3.1993 by issuing the notices to the parties and also bearing in mind that the properties of the Devasthan and the ancestral properties are to be equally distributed as per the respective shares and also bearing in mind the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

11. Rule is accordingly made absolute in the aforesaid terms with the parties to bear their own costs.

(R.M. SAVANT, J)